



Title: The right to food in theory and practice...

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# Implementation of the right to food in national legislation

## FAO Legal Office

States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are required to adopt, *inter alia*, the legislative measures necessary to realize the right to an adequate standard of living, including the right to adequate food. Several countries already have provisions on the right to food in their national constitutions, but there is still a worldwide lack of experience in designing and using national legislation to implement those provisions.

Of course, problems and causes of hunger or lack of access to adequate food vary greatly from country to country, so different solutions will be needed in each. However, it seems that legal tools could be used to further implementation of the right to adequate food in all countries.



*After eating, children are weighed and measured in Burkina Faso*  
The primary responsibility for ensuring the right to food lies with

## National responsibility

ICESCR Article 11 recognizes the right of everyone to an adequate standard of living for themselves and their families. The right to an adequate standard of living includes the rights to adequate food, freedom from hunger and the continuous improvement of living conditions. The States Parties to the Covenant commit themselves to take appropriate steps to ensure the realization of this right. Under ICESCR Article 2, these steps are to be taken by each State Party, "to the maximum of its

the national authorities of each country.

available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including *particularly the adoption of legislative measures*" (emphasis added).

This commitment was renewed by the world's leaders in 1996 in the context of Commitment 7.4 of the World Food Summit (WFS) Plan of Action, in which governments announced that they would make every effort to implement the provisions of ICESCR Article 11. In the Plan of Action, governments pledged their political will and common and national commitment to achieving food security for all<sup>11</sup> and to an ongoing effort to eradicate hunger in all countries, with an immediate view to reducing the number of undernourished people to half its present (1996) level no later than 2015.<sup>12</sup>

The primary responsibility for ensuring the full enjoyment of the right to adequate food lies with the national authorities of each state. This applies both to the obligations contained in the International Human Rights Covenants and to the commitments under the WFS Plan of Action.

In recognition of this primary responsibility, a number of countries have enshrined the right to adequate food, or at least the responsibility of the state in this area, in their national constitutions.<sup>13</sup> As yet, however, no country has adopted national legislation expressly to implement this right. Neither has any substantial work been done to establish how such commitments can be implemented in national legislation, although some elements of such a methodology have been defined and are presented below.

## Levels of state obligations

Human rights experts have identified three levels at which the state's human rights obligations operate; states must respect, protect and fulfil their subjects' rights. Obligations can be divided further into obligations of result and obligations of conduct, the latter being the focus of legislative action. This basic analysis already provides some guidance as to the types of action that a state may

take through national legislation.

*Obligations to respect* stipulate limits on the exercise of state power, rather than positive action. The state should not, in general, interfere with the livelihood of its subjects or their abilities to provide for themselves. Where any review indicates the existence of national legislation that has such an effect, either directly or indirectly, then immediate action will be called for to rectify the situation.

*Obligations to protect* require regulating the conduct of non-state actors. This entails the establishment of an enabling regulatory environment, that is legislation and sanctions, for example, in the fields of food safety and nutrition, protection of the environment and land tenure.

*Obligations to fulfil* require positive action by the state to identify vulnerable groups and to design, implement and monitor policies that will facilitate their access to food-producing resources or an income. As a last resort, direct assistance may have to be provided, to ensure, at a minimum, freedom from hunger.

A useful first step in deciding on legislative measures for the implementation of the right to food would be for states to review how effectively they are already implementing their obligations to respect, protect and fulfil, not only in the substantive areas of food production, processing, distribution and consumption, but also in the infrastructure that underlies those areas, for example in land tenure systems.

While doing this, states should also define the extent to which national government itself should intervene, in the light of the principles of individual responsibility, subsidiarity and complementarity, bearing in mind that the state's obligation is to ensure the right to adequate food, and not necessarily to carry out itself every substantive action or measure that needs to be taken.

A government's primary responsibility is not to interfere with individuals' efforts to provide for themselves, but to seek to ensure an enabling environment for such efforts. However, within

every state, there will always be some persons who need direct assistance and, in this context, the efficacy of existing social safety nets and social legislation should also be reviewed, taking into account the role of local authorities.

## Scope of legislative reviews

The constitutional provisions recognizing the right to an adequate standard of living, including the right to food, are normally concise and focused, while the measures that may be required to give effect to that right will inevitably be far-ranging and extend into many different areas. The measures will therefore need to be practically oriented and, for this, the WFS Plan of Action provides a blueprint as well as establishing targets for national governments, civil society and the international community. Legislative and institutional measures are an essential component in constructing the enabling environment in which rights can be realized.

Any review of national legislation and institutions needs to be wide-ranging enough to cover all the relevant areas, but narrow enough to be tangible and practicable. A well-focused review requires some initial understanding of the nature and extent of the problem, the locations and numbers of those who are deprived of the right to food or have inadequate access to food, and the reasons for that lack of access.<sup>14</sup>

The specific areas in which corrective legislative action is needed should then be identified. These areas may include land tenure, access to water, credit, rural markets, food production and food quality, as well as the institutional and legislative framework in which the right to adequate food is to be realized.

The extent to which existing legislation and institutions are already realizing the right to food is, of course, only one of the issues that a review of national legislation and institutions needs to take into account - each country will have its own constraints on the realization of the right to adequate food. However, all relevant legislation and institutions will need to be reviewed from the



point of view of the degree in which, in addition to achieving their own sectoral objectives, they contribute to an adequate regulatory and enabling framework for the realization of the right to food, bearing in mind the state's obligations in this regard.

In addition, national legislation can also establish the framework within which the review and practical measures take place by: establishing general principles for the implementation of the right to adequate food; setting targets and deadlines; and establishing the institutional framework for policy-making and the monitoring of progress.

<sup>11</sup> Food security is defined in the introduction to the WFS Plan of Action as existing when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

<sup>12</sup> See Rome Declaration on World Food Security, paragraph 2.

<sup>13</sup> The constitutions of the Congo (Art. 34), Ecuador (Art. 19), Haiti (Art. 22), Nicaragua (Art. 63), South Africa (Art. 27), Uganda (Art. 14) and Ukraine (Art. 48) recognize explicitly the right to adequate food as set out in ICESCR. The constitutions of Bangladesh (Art. 15), Ethiopia (Art. 90), Guatemala (Art. 99), India (Art. 47), the Islamic Republic of Iran (Arts. 3 & 43), Malawi (Art. 13), Nigeria (Art. 16), Pakistan (Art. 38), Seychelles (Preamble) and Sri Lanka (Art. 27), set the achievement of these goals as responsibilities of the state, while the constitutions of Brazil (Art. 227), Guatemala (Art. 51), Paraguay (Art. 53), Peru (Art. 6), and South Africa (Art. 28), recognize the right of children to adequate food and nutrition. See *The right to food in national constitutions*.

<sup>14</sup> In this context, use could be made of FAO's Food Insecurity and Vulnerability Information and Mapping System (FIVIMS), see p. 29.